

**BUSINESS AND NONINSTRUCTIONAL OPERATIONS****Ethics in Public Contracting****A. Generally**

The school board demands compliance with both the word and the intent of Article 4 of the Virginia Public Procurement Act, entitled "Ethics in Public Contracting." This regulation details the provisions of this law.

**B. Definitions**

The words defined in this regulation shall have the meanings set forth below:

1. "Immediate family" shall mean a spouse, children, parents, brothers and sisters, and any other person living in the same household as the employee.
2. "Official responsibility" shall mean administrative or operating authority, whether immediate or final, to initiate, approve, disapprove or otherwise affect a procurement transaction, or any claim resulting therefrom.
3. "Pecuniary interest arising from the procurement" shall mean a material financial interest as defined in the Virginia Conflict of Interests Act.
4. "Procurement transaction" shall mean all functions that pertain to the obtaining of any goods, services or construction, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration.
5. "Public employee" shall mean any person employed by a public body, including elected officials or appointed members of governing bodies.

**BUSINESS AND NONINSTRUCTIONAL OPERATIONS****Ethics in Public Contracting (continued)****C. Proscribed Participation by Employees in Procurement Transactions**

Except as may be specifically allowed by provisions of the Comprehensive Conflict of Interests Act, no public employee having official responsibility for a procurement transaction shall participate in that transaction on behalf of the school board when the employee knows that:

1. The employee is contemporaneously employed by a bidder, offeror or contractor involved in the procurement transaction; or
2. The employee, the employee's partner, or any member of the employee's immediate family holds a position with a bidder, offeror or contractor such as an officer, director, trustee, partner or the like, or is employed in a capacity involving personal and substantial participation in the procurement transaction, or owns or controls an interest of more than five percent; or
3. The employee, the employee's partner, or any member of the employee's immediate family has a pecuniary interest arising from the procurement transaction; or
4. The employee, the employee's partner, or any member of the employee's immediate family is negotiating, or has an arrangement concerning, prospective employment with a bidder, offeror or contractor.

**D. Solicitation or Acceptance of Gifts**

No employee having official responsibility for a procurement transaction shall solicit, demand, accept, or agree to accept from a bidder, offeror, contractor or subcontractor any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal

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or minimal value, present or promised, unless consideration of substantially equal or greater value is exchanged. The school board may recover the value of anything conveyed in violation of this section.

**E. Disclosure of Subsequent Employment**

No employee or former employee having official responsibility for procurement transactions shall accept employment with any bidder, offeror or contractor with whom the employee or former employee dealt in an official capacity concerning procurement transactions for a period of one year from the cessation of employment by the school board unless the employee, or former employee, provides written notification to the superintendent prior to commencement of employment by that bidder, offeror or contractor.

**F. Gifts by Bidders, Offerors, Contractors or Subcontractors**

No bidder, offeror, contractor or subcontractor shall confer upon any employee having official responsibility for a procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is exchanged.

**G. Kickbacks**

1. No contractor or subcontractor shall demand or receive from any of his suppliers or his subcontractors, as an inducement for the award of a subcontract or order, any payment, loan, subscription, advance, deposit of money, services or anything, present or promised, unless consideration of substantially equal or greater value is exchanged.

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2. No subcontractor or supplier shall make, or offer to make, kickbacks as described in this regulation.

3. No person shall demand or receive any payment, loan, subscription, advance, deposit of money, services or anything of value in return for an agreement not to compete on a public contract.

4. If a subcontractor or supplier makes a kickback or other prohibited payment as described in this regulation, the amount thereof shall be conclusively presumed to have been included in the price of the subcontract or order and ultimately borne by the school board and will be recoverable from both the maker and recipient. Recovery from one offending party shall not preclude recovery from other offending parties.

**H. Purchase of Building Materials, etc. from Architect or Engineer Prohibited**

1. Except in cases of emergency, no building materials, supplies or equipment for any building or structure constructed by or for a public body shall be sold by or purchased from any person employed as an independent contractor by the public body to furnish architectural or engineering services, but not construction, for such building or structure or from any partnership, association, or corporation in which such architect or engineer has a personal interest as defined in §2.1-639.2.

2. Except in cases of emergency, no building materials, supplies or equipment for any building or structure constructed by or for a public body shall be sold by or purchased from any person which has provided or is currently providing design services specifying a sole source

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for such materials, supplies or equipment to be used in such building or structure to the independent contractor employed by the public body to furnish architectural or engineering services in which such person has a personal interest as defined in §2.1-639.2. (1982, c. 647; 1993, c. 202; 1994, c. 882.)

**I. Penalty for Violation**

Willful violation of any provision of this regulation shall constitute a Class 1 misdemeanor. Upon conviction, any employee, in addition to any other fine or penalty provided by law; shall forfeit his/her employment.

The penalty for conviction of a Class 1 misdemeanor is up to a \$1,000 fine and/or up to one year in jail or both.

**Editor's Note**

See also school board policy #4-2

Regulatory Authority: (1994)

Code of Va., §§11-72 thru 11-80.--"Virginia Public Procurement Act." (§11.79 amended 1994)

Code of Va., §11-79.1. Certification of compliance required; penalty for false statements.—A. Public bodies may require public employees having official responsibility for procurement transactions in which they participated to annually submit for such transactions a written certification that they complied with the provisions of this article..

B. Any public employee required to submit a certification as provided in subsection A of this section who knowingly makes a false statement in such certification shall be punished as provided in §11-80. (1992, c. 761.)

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Code of Va., §11-79.2. Misrepresentations prohibited.—  
No public employee having official responsibility for a  
procurement transaction shall knowingly falsify, conceal, or  
misrepresent a material fact; knowingly make any false,  
fictitious or fraudulent statements or representations; or  
make or use any false writing or document knowing the same  
to contain any false, fictitious or fraudulent statement or  
entry. (1992, c. 761.)

Approved by Superintendent: April 6, 1987  
Amended by Superintendent: July 23, 1996